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Committee to Review Prescription Drug Strategies, Mental Health Crisis Services

The Children, Families, Health, and Human Services Interim Committee will take a look in March at ways to prevent prescription drug abuse and at the types of crisis facilities that currently serve Montanans with mental illness.

The discussions are part of the committee's efforts to gather information for the two studies it's conducting this interim -- the Senate Joint Resolution 20 study of ways to reduce prescription drug abuse and the House Joint Resolution 16 study of state-operated institutions.

Also at the March 13-14 meeting, committee members will hear about Montana's uninsured population and how the federal health care law might affect the number of Montanans without insurance.

Day 1: SJR 20 Study and Agency Monitoring

On March 13, the committee will hear about strategies to prevent or mitigate abuse, misuse, and diversion of prescription painkillers. Presentations will cover:

- opioid dosing guidelines in use in Washington state;
- prevention strategies used elsewhere the country; and
- communities in need of prevention efforts in Montana.

In addition, Medicaid providers who serve people with developmental disabilities will discuss their programs. Committee members also will review Department of Public Health and Human Services advisory councils and reports required by law. The review stems from the 2011 Legislature's passage of House Bill 142, which required interim committees to determine if any of the councils or reports should be eliminated or modified.

State law establishes 19 advisory bodies involving DPHHS and requires 15 agency reports. Some of the advisory councils have not met in recent years, while some reports haven't been published. The committee will review a summary of the councils and reports, hear recommendations from DPHHS, and take public comment. Based on its review, the committee may ask for more information about specific councils or reports or may ask for a bill draft to repeal or change a council or report.

Day 2: HJR 16 and ACA

On March 14, the committee will focus on the HJR 16 study by:

- hearing presentations about facilities that serve mentally ill individuals who are in crisis;
- discussing a recent visit by some committee members to a Bozeman crisis stabilization and emergency detention facility; and
- discussing whether additional community or crisis services could reduce the number of people admitted to the Montana State Hospital in Warm Springs for treatment.

In addition, committee members will take a look at how the federal Affordable Care Act has affected Montana. That federal law requires individuals to buy health insurance or face tax penalties, starting this year. It also provides subsidies to help many people under 400 percent of the federal poverty level pay for their insurance policies and medical bills.

Economist Gregg Davis will review the a study he undertook in 2012 on the uninsured in Montana and the potential effects of ACA. Adam Schafer of the State Auditor's Office will discuss that office's role in education and outreach efforts as well as the questions that the office has been receiving from Montanans as they look at their insurance options. The Montana Primary Care Association will discuss the outreach and enrollment efforts it has undertaken as one of three Montana groups that received federal funds to help people understand the ACA requirements and enroll in coverage.

Next Meeting

The committee meets next at 10 a.m. on March 13 in Room 152 of the Capitol in Helena. The meeting will continue at 8 a.m. on March 14. For more information about the committee's activities and upcoming meeting, visit the committee's website or contact Sue O'Connell, committee staff.

Committee Website: www.leg.mt.gov/cfhhs

Committee Staff: soconnell@mt.gov or 406-444-3597

Economic Affairs to Follow Up on State Fund, Dates for Milk Sales

On March 27, the Economic Affairs Interim Committee will resume discussions regarding whether to restructure the Montana State Fund. Members will review a series of options for inclusion in a proposed committee bill.

A subcommittee looking at the requirements for setting milk "sell-by" dates also will meet that day, before the meeting of the full committee. Subcommittee members are Rep. Greg Hertz, R-Polson, and Sen. Tom Facey, D-Missoula.

Montana's milk sell-by date has been an issue of controversy for years and currently is the subject of an appeal to the Montana Supreme Court. In March, the subcommittee will ask stakeholders to comment on whether a statute is more appropriate than the current rule and, if so, what that statute should say.

In many states, the processor puts a "best if used by date" on containers of Grade A milk. In Montana, the Board of Livestock has determined that a "sell-by" date is appropriate. If milk is not sold within 12 days of being pasteurized, the rule says the milk may not be sold "or otherwise offered for public consumption" even if still drinkable for another week or so.

Proponents of the 12-day rule say that consumers are assured of obtaining a product that is good in their own refrigerators for a reasonable period after purchase. Opponents say that good milk is wasted and that consumers do not understand what the date on the container means. Both sides are invited to participate in the subcommittee meeting, as are members of the public.

On other matters, the committee also will hear from the Department of Commerce on economic development incentives and receive an update from the Board of Investments.

Montana State Fund Study

During the afternoon of March 27, the committee will immerse itself in the House Joint Resolution 25 study of workers' compensation. The study includes not only the Montana State Fund restructuring but also reviews of the Workers' Compensation Court and appointment of the work comp judge, as well as updates on various aspects of HB 334 from the 2011 Legislature. That bill changed stay-at-work and return-to-work programs, mandated treatment guidelines for work comp health care providers, and made other changes to benefits.

In considering the Montana State Fund restructuring, the committee will determine how broad or narrow to make a committee bill.

HJR 25 also called for an examination of subrogation related to workers' compensation, and the committee undertook that review at its Jan. 27-28 meeting. Staff will compile public comments regarding whether to change subrogation statutes for further review in May. Among options under consideration, which may or may not meet Montana constitutional muster, are to:

- define the term "made whole," which has been equated with "full legal redress" as used in the Montana Constitution's Article II, Section 16, for workers' compensation;

- allow insurers to recover medical benefits regardless of whether an injured worker can show damages that surpass the combination of work comp benefits and the amount available from the at-fault third party; or
- create an order of priority for payments using first the at-fault third-party's insurance then workers' compensation, regardless of whether the injured worker has damages greater than the combination of both.

The committee also received information on legal concerns and financial options for handling the "Old Fund" workers' compensation claims that were made on the State Fund prior to July 1, 1990. These claims currently are paid from the general fund but are not subject to appropriation. The proposed options include ways of removing those claims from the general fund over time by providing a lump sum transfer of money to another payor. A legal analysis reminded the legislators that the Old Fund debt remains an obligation of the state.

Other Activity in January

Among other topics discussed at the Jan. 27-28 meeting were:

- the use of horse transportation permits and whether the Department of Livestock could streamline the process, which is used primarily to thwart horse thefts;
- the financial problems of the state's Veterinary Diagnostic Laboratory at Montana State University in Bozeman;
- Department of Agriculture activities, including information on how the department is working to encourage a continued strong agricultural economy through diversification of commodities and help for young couples starting to farm, monitor the hail insurance program's reserves, develop information on food safety laws under House Bill 630, and prevent the spread of noxious weeds;
- concerns about professional and occupational board operations and funding, which included a committee decision to allow boards to have contingency fees and otherwise to fine-tune a requirement for board fees to be commensurate with costs;
- a Legislative Fiscal Division review and comparison of biennial appropriations using all funds and not just the typically analyzed general fund budget; and
- cost overrun possibilities for the following: a program that oversees boxing, the Board of Hearing Aid Dispensers, the Board of Funeral Services, and the Board of Private Alternative Adolescent Residential or Outdoor Programs. The committee agreed to hear more on these financial concerns at later meetings. A report on the Board of Hearing Aid Dispensers will be provided at the

March meeting. The boxing program and other boards will be reviewed again in July.

Next Meeting

The committee meets next on March 27 in Room 152 of the Capitol in Helena. A subcommittee on the 12-day milk rule will convene at 8:30 a.m., and the full committee will meet at 10:30 a.m. For more information about the committee's activities and upcoming meetings, visit the committee's website or contact committee staff Pat Murdo.

Committee Website: www.leg.mt.gov/eaic

Committee Staff: pmurdo@mt.gov or 406-444-3594.

ELG Reviews SB 175 Impacts, Explores Early Childhood Education

A number of school district trustees and administrators spoke at the Feb. 3-4 meeting of the Education and Local Government Interim Committee about the ways their districts have used increased funding approved by the 2013 Legislature.

Representatives from school districts of all sizes shared their stories with committee members as they discussed the use of funding increases resulting from Senate Bill 175, sponsored by Sen. Llew Jones. They also discussed their efforts in implementing the Montana Common Core Standards.

Speakers mentioned the challenges of both growth and declining enrollment, as well as the desire for increased local flexibility in addressing the myriad issues facing districts across Montana. The Montana School Boards Association organized the presentations and secured representation from members of the association's various caucus groups.

Early Childhood Education

As part of its work plan, the committee also heard presentations on current research and initiatives on early child education. On the second day of the February meeting, Todd Grindal of Abt Associates presented current research related to early childhood brain development. The research emphasizes the importance of the early years in developing brain circuitry and developing executive function. Grindal also described the effects of "toxic stress" on brain development. Toxic stress is prolonged and severe stress for young children in the absence of protective relationships.

Robyn Lipkowitz of the National Conference of State Legislatures reviewed the research on effectiveness of different early childhood programs. She highlighted studies that have attempted to estimate the return on investment of high quality preschool programs as well as studies that have questioned the long-term efficacy of some programs. Lipkowitz pro-

vided an overview of approaches used in other states, as well as different financing strategies.

State agency representatives provided an overview of current programs in Montana addressing early childhood. Speakers were Shannon O'Brien, education policy adviser for Gov. Steve Bullock; Sarah Corbally and Jamie Palagi of the Department of Public Health and Human Services; Tara Ferriter-Smith of the Office of Public Instruction; and Libby Hancock of the Montana Early Childhood Project.

Electronic Records Management

Committee staff provided a brief update on the continuing efforts of the House Joint Resolution 2 Electronic Records Management Work Group. Following committee discussion in December, Chairman Tom Facey appointed Reps. Jean Price, D-Great Falls, and Don Jones, R-Billings, to the work group. The two legislators attended the January work group meeting. The group continues to make progress towards a report that will include its findings and recommendations for ELG's consideration in April.

One subgroup of the work group is reviewing current statutes and preparing recommendations. Another subgroup is exploring funding mechanisms to support improved electronic records management. The work group will meet next on March 19. Information and meeting materials can be found on the committee's website.

Shared Policy Goals for Education

The Subcommittee on Shared Policy Goals for Education met for the first time on the morning of Feb. 3, prior to the full ELG meeting that day. The subcommittee is chaired by Rep. Kris Hansen, R-Havre. Other members are Rep. Edie McClafferty, D-Butte; Sen. Sharon Stewart-Peregoy, D-Crow Agency; and Sen. Eric Moore, R-Miles City. Members were joined in a roundtable discussion by Superintendent of Public Instruction Denise Juneau, OPI Chief of Staff Madalyn Quinlan, Board of Public Education Executive Director Pete Donovan, and Tyler Trevor, deputy commissioner for planning and analysis for the Office of the Commissioner of Higher Education.

The subcommittee reviewed the current Shared Policy Goals documents and received updates on the current status of accountability measures. Juneau presented a handout of strategic directions and performance measures that will guide OPI efforts through 2016. The subcommittee determined that the Shared Policy Goals are a valuable tool for increasing collaborative efforts and advancing interagency cooperation.

The subcommittee will meet again in April to continue its work.

Other Topics

The committee also received a report from the Legislative Fiscal Division on the fiscal impacts of SB 175, the school funding bill. The report identified the increased funding that went to schools as a result of the bill and the amount of funding in excess of the statutorily defined inflation factor. Another aspect of the report described the distribution of oil and gas revenues through the "concentric circles" model created in the bill.

Bureau of Mines Director John Metesh made a brief presentation to the committee describing the function of the bureau. He explained the applicability of 82-2-701, MCA, which created the Sand and Gravel Deposit Program. The bureau is developing statewide digital maps of sand and gravel deposits as part of the program.

Next Meeting

The full committee meets next on April 11 in Room 152 of the Capitol in Helena. The Subcommittee on Shared Policy Goals for Education will meet on April 10. For more information on the committee's activities and upcoming meetings, visit the committee's website or contact Pad McCracken, committee staff.

Committee Website: www.leg.mt.gov/elgic

Committee Staff: padmccracken@mt.gov or 406-444-3595

ETIC to Examine RPS Impacts

The requirement that Montana utilities obtain a portion of their energy from renewable resources has had a minimal impact on retail customer rates, according to information provided by Montana's largest utilities. Utilities, however, raise concerns about their ability to maintain a balance between customer needs and available resources if the standard is increased.

NorthWestern Energy also notes that its highest-cost RPS resources are currently more costly, on a dollar-per-megawatt hour basis, than the market purchases that they displace.

Since 2008, the Montana Renewable Power Production and Rural Economic Development Act, better known as Montana's RPS, has required certain utilities to procure a percentage of their resources from renewable resources.

Senate Joint Resolution 6, approved by the 2013 Legislature and assigned to the Energy and Telecommunications Interim Committee, sets out the parameters that the committee is to analyze in its review of the consumer impacts of the RPS. Those parameters include:

- mitigation or contribution to higher energy costs for consumers;

- hedging against volatility in fossil fuel prices; and
- other efforts to help consumers.

At the committee's March 21 meeting, members will focus on these customer impacts and those three issues. Representatives from Montana utilities and electricity suppliers have also agreed to share their perspectives on the customer impacts of the standard.

As directed by SJR 6, the committee's study is focused on the economic impacts of the renewable portfolio standard, the environmental benefits of the standard, and the impacts the standard has had on Montana consumers. The committee began its work by reaching out to renewable generators and public utilities and electricity suppliers who are subject to the standard. In the fall of 2013, those entities received a survey from the ETIC. The survey was drafted in an effort to capture questions relevant to entities involved in meeting Montana's RPS.

The surveys offer a wealth of information from the perspective of both renewable developers and utilities and suppliers required to meet the standard. The results of the comprehensive survey are now available for review on the committee's website. Anecdotal evidence provided by those entities in Montana suggests limited rate impacts for most Montana customers so far -- largely based on the responses to the surveys.

Other Topics

Also at the March meeting, the committee will receive copies of the renewable energy credit reports. The committee is statutorily required to review those reports.

The committee also will continue its discussion of so-called "green schools." The committee agreed to spend time this interim evaluating energy conservation and efficiency measures in the construction, renovation, operation, and maintenance of schools.

The Public Service Commission will update the committee on its current dockets and its investigation of the USB program.

Next Meeting

The committee meets next at 8:30 a.m. on March 21 in Room 172 of the Capitol in Helena. For more information about the committee's activities and upcoming meeting, visit the committee's website or contact Sonja Nowakowski, committee staff.

Committee Website: www.leg.mt.gov/etic

Committee Staff: snowakowski@mt.gov or 406-444-3078

EQC to Take Up Hunting and Fishing Licenses, Federal Land Management

Proposals for revamping fish and game license fees top the agenda for the Environmental Quality Council's March 19-20 meeting.

The Fish and Wildlife Licensing and Funding Advisory Council is developing recommendations for simplifying the structure of the state's hunting and fishing licenses. The council is comprised of citizens and two legislators appointed by the director of the Department of Fish, Wildlife and Parks. Council members consider adjustments to license fees necessary for sustaining long-term funding for fish and wildlife management in Montana.

It is likely that proposed changes would go to the 2015 Legislature. House Bill 609, passed by the 2013 Legislature, directed EQC to study the licensing system. The council incorporated the advisory council's effort into its work plan.

Advisory council recommendations include:

- creating a base hunting license that must be purchased before individual species tags; and
- reducing the time between legislative review of the license structure and prices from approximately 10 years to four years.

Federal Land Management

The EQC also continues its study of federal land management. That segment of the March meeting is scheduled to include an attorney from the U.S. Forest Service who will discuss a wide range of issues and also answer questions.

An EQC work group chaired by Sen. Jennifer Fielder has met twice a month by teleconference since October. The group, which includes Sen. Brad Hamlett and Reps. Ed Lieser and Kerry White, has identified a wide range of concerns with federal land management and will continue to identify possible solutions.

The EQC is directed to study federal land management by Senate Joint Resolution 15, sponsored by Fielder and passed in 2013.

Other agenda items include an update on the Greater Sage-Grouse Habitat Conservation Strategy, proposed rules for nutrient standards and a variance from those standards for discharges into state waters, and an update on the state water plan.

Next Meeting

The EQC meets next on March 19-20 in Room 317 of the Capitol in Helena. For more information on the council's

activities and upcoming meeting, visit the council's website or contact Joe Kolman, council staff.

Council Website: www.leg.mt.gov/eqc

Council Staff: jkolman@mt.gov or 406-444-3747

LJIC Looks at Parole Board Practices, Gun Ownership for Mentally Ill

The Law and Justice Interim Committee dedicated two days in February to deliberate on Montana's parole system, opportunities for mediation in family law cases, and how Montana's laws would need to be amended for the state to report to a federal database the names of people who have been involuntarily committed to the Montana State Hospital and are prohibited by federal law from owning firearms.

Ten panelists spent the morning of Feb. 13 discussing and answering questions about mental health and gun ownership. Federal and state government officials explained how the National Instant Criminal Background Check System (NICS) works, how law enforcement agencies and licensed firearms dealers use NICS, the records Montana currently makes available to NICS, the information the state does not provide, and how federal grant funding for the state could be affected by continued failure to provide those records to NICS.

Other panelists discussed whether the Legislature should create an appeal process to restore gun ownership rights to a person who has been disqualified from gun ownership by federal law because of certain mental health conditions, including an involuntary commitment to the state hospital. Speakers and legislators both focused comments and questions on privacy rights, mental health care funding, and the potential impact on veterans. Numerous individuals also testified during the public comment period.

Committee members subsequently requested more information about appeals mechanisms created in other states, particularly focusing on states that created or used an existing board or commission to hear those appeals.

Court System Review

On Thursday afternoon, the committee heard from Montana Court Administrator Beth McLaughlin about the structure and funding of Montana's court system. She noted workload increases in certain judicial districts, particularly Yellowstone County and eastern Montana districts near the Bakken oil fields. McLaughlin also highlighted the Golden Triangle area, which has a single judge for a four-county district.

Joined by District Court Judge Mike Salvagni from Gallatin County, McLaughlin discussed how some judicial districts use standing masters in family law cases, as well as the differences between the caseloads, authority, and funding for standing

masters and judges. She noted that the District Court Council will be continuing its study of the funding and court workload issues in the spring with the goal of arriving at a long-range, strategic plan for how to address those challenges.

McLaughlin and Brian Muldoon, chairman of the Mediation Subcommittee of the State Bar of Montana's Justice Initiatives Committee also presented information on how North Dakota and Washington state have used mediation in family law cases. McLaughlin discussed a pilot project initiated by the North Dakota judicial branch to provide family law litigants with several hours of paid mediation for divorce and parenting cases. Muldoon discussed how judicial districts in Montana could each develop local rules to require mediation. He also presented ideas for legislation to implement this change, including establishing qualifications for family law mediators. More information on these two topics will be presented at the April meeting.

After commenting on family law and mediation issues, Judge Salvagni shared his perspectives on sentencing laws in criminal cases, how he approaches his work in those cases, and on the role of the Board of Pardons and Parole, which is the focus of the committee's Senate Joint Resolution 3 interim study.

Parole Board Study Continues

On Feb. 14, the committee heard updates from the director of the Department of Corrections and the executive director of the parole board. Department and board staff also detailed their work to develop a set of evidence-based risk and needs assessments to use with Montana's male and female offenders. The assessment tools are based on an Ohio risk assessment tool and are being tailored to fit Montana's offender populations.

These statistical tools measure the probability that an offender might commit a new offense when the offender is released. They also can help corrections officials determine the amount and types of treatment or programming to help an offender address any mental health, substance abuse, or criminal thinking issues. The risk and needs assessment tools are used for a wide variety of criminal justice purposes, from sentencing in the courts to determining placement and programming needs in a correctional setting to making release and post-prison supervision decisions.

When completed, the Montana tools will provide information to guide corrections staff, parole board members and staff, and other people working with criminal offenders when making decisions about supervision or programming.

To round out their SJR 3 work, committee members learned about the way in which potential residents for the Helena Pre-Release Center are screened by a local committee. They

also discussed conditions of parole that are placed on offenders released from custody.

Committee staff presented follow up reports on several topics of interest from the December meeting, including the possibility of requiring audio or visual recording of parole board hearings, the work of a criminal justice advisory committee that met in 1990, certificates of rehabilitation, the repeal of so-called “good time” in the mid-1990s, and the parole board’s exemption from most of requirements of the Montana Administrative Procedure Act.

After two full days of careful listening, committee members directed staff to provide information and, in some cases, draft bill language for future meetings on the following topics:

- the various fees that parolees pay for parole supervision, treatment, and other programs required as a condition of their release;
- audio or visual recording of all parole hearings conducted by the board;
- South Dakota’s work with the Pew Center for the States to identify and implement changes to the state’s corrections and criminal justice systems;
- administrative rules of the parole board, including legislative oversight;
- restricting the board’s ability to set conditions of parole; and
- the criteria used by the board when making parole decisions, including that the detailed criteria used by the board are located in rule.

The committee also will take a closer look at the parole process used in South Dakota.

Next Meeting

The committee meets next on April 28, rather than on April 25 as originally scheduled. For more information about the committee’s activities and upcoming meeting, visit the committee’s website or contact Rachel Weiss, committee staff.

Committee Website: www.leg.mt.gov/ljc

Committee Staff: rweiss@mt.gov or 406-444-5367

Committee Reviews Variety of Audits

At a Feb. 13 meeting, the Legislative Audit Committee reviewed more than a dozen audits of state agencies, programs, and services. The audit findings are summarized below.

Financial Compliance Audits

- An audit of the Office of the Commissioner of Higher Education (13-20) made one recommendation related to compliance with three state laws regarding internal service funds.
- A Consumer Counsel audit (contract audit 13C-10) made no recommendations.
- A Department of Commerce (13-16) audit included six recommendations. Four related to internal controls, including payment authorizations, conflicts of interest, federal administrative expenses, and procurement cards. Two others focused on compliance with state laws concerning travel policy and payments and membership requirements of the Montana Heritage Commission.
- An audit report of the Department of Fish, Wildlife and Parks (13-18) included recommendations related to unrecorded liabilities at fiscal year-end for construction projects and an overstated revenue estimate in the federal special revenue fund in Fiscal Year 2013.
- An audit of the Legislative Branch (contract audit 13C-09) conducted by an outside firm made no recommendations.
- An Office of Public Instruction audit (13-19) made five recommendations related to internal controls, compliance with federal regulations, and state accounting policy.
- A contract audit of Miles Community College (contract audit 12C-08) made two recommendations relating to the timeliness of posting and balancing transactions and the timeliness of submitting financial statements.
- An audit of the Montana State Library Commission (13-23) made no recommendations and determined that the commission’s financial schedules present fairly the financial position and results of operations.
- The Montana State Lottery audit report (13-30A) included one recommendation concerning compliance with state policy requirements governing the use of procurement cards.
- An audit of the Montana State University Workers’ Compensation Program (contract audit 13C-04) made no recommendations and determined that the program’s financial schedules present fairly the financial position and results of operations.

Financial Audits (financial statements)

- A Board of Investments financial audit made no recommendations and determined that the board’s Unified Investment Program financial statements present fairly the financial position and results of operations and that

the board's Enterprise Fund financial statements present fairly the financial position, results of operations, and cash flows for the time period reviewed.

- An audit of the Teachers' Retirement System (12-09B) determined that the financial statements were presented in all material respects in conformity with Generally Accepted Accounting Principles.
- An audit of the Montana Guaranteed Student Loan Program (13-06) made no recommendations and determined that the program's financial statements present fairly the financial position and results of operations.
- A Montana State University audit (13-11A) made no recommendations and determined that the university's financial statements present fairly the financial position and results of operations.
- A University of Montana audit (13-10) made no recommendations and determined that the university's financial statements present fairly the financial position and results of operations.

Performance Audits

- An audit of the state investment management and governance practices of the Montana Board of Investments (12P-10) included six recommendations related to the management and governance of the investing activities of the board. Recommendations included having the Montana Legislature increase the experience requirements for members of the board, having the board enhance and require the ongoing educational activities provided to board members, and having the board seek revisions to the Montana Procurement Act to provide an exemption for the contracting of external investment services. Other recommendations were made in the areas of asset allocation and the annual affirmation of those allocations, other tasks required by the charters of the board and its various committees, and the board's proxy voting program.
- An audit of the Workers' Compensation Premium Review (13P-05) made seven recommendations to Montana State Fund for strengthening controls regarding calculations and premium returns to better ensure consistency, accuracy, and equity among MSF's policyholders.

Information Systems Audit

- An audit of the vital statistics information management system at the Department of Public Health and Human Services (13DP-02) identified six recommendations. They relate to user review process, creation and assignment of application roles, reset of user passwords, monitoring of users with administrative rights, protocol regarding

release of death record data, and possible additional uses of automation for efficiencies.

The committee also received a report on an independent actuary's review (13C-03) of Montana State Fund rates and claims liability, which found MSF rates effective July 1, 2013, are not excessive, inadequate, or unfairly discriminatory. The report also determined that MSF's recorded loss and loss adjustment reserves (LAE) at June 30, 2013, were reasonable. However, regarding obligations prior to July 1, 1990, for the so-called "Old Fund," the actuary's estimated loss and LAE reserves at June 30, 2013, were above MSF's high range estimate.

The Legislative Audit Division provides independent and objective evaluations of the stewardship, performance, and cost of government policies, programs, and operations. The division is responsible for conducting financial, performance, and information system audits of state agencies and programs, including the Montana University System. For more information, call the division at 406-444-3122 or visit its website. To search for a specific audit, use the identifier listed above in parentheses.

To report suspected improper acts committed by state agencies, departments, or employees, call the division fraud hotline at 800-222-4446 or 406-444-4446 in Helena.

Next Meeting

The next Audit Committee meeting is anticipated in late May or early June, but has not yet been scheduled. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Legislative Auditor Tori Hunthausen.

Division Website: www.leg.mt.gov/audit

Division Contact: 406-444-3122

Council Set to Receive More Information on Legislative Process, Improvements

The Legislative Council will continue its exploration of legislative practices in other states when it meets March 20 in Helena.

All stakeholders from the public, current and past legislators, lobbyists, agency representatives, and public interests groups will be given an opportunity to speak on their ideas for legislative improvement.

The council's review includes information on public outreach, staffing, legislator compensation, and orientation and training. Results of a survey sent to all legislators on legislative compensation and scheduling also will be presented.

Materials prepared for the council's work on legislative improvement are available on the council's website, under a new link labeled "[Legislative Improvement](#)."

The council meeting will begin at 9 a.m. on March 20 in Room 172 of the Capitol in Helena. For more information on the committee's activities and the upcoming meeting, visit the committee's website or contact Susan Byorth Fox, committee staff.

Committee Website: www.leg.mt.gov/legcouncil
Committee Staff: sfox@mt.gov or 406-444-3066

Finance Committee to Meet March 13-14

The Legislative Finance Committee will hear an update on the state budget and revenue trends when it meets March 13-14 in Helena.

The committee also will continue to study pay plans as directed by House Joint Resolution 17. A panel of union representatives will explain the negotiation process and how that process affects the state pay plans. Staff will provide the committee with additional information on administrative rules for pay bands, an updated legal memo on state employee salaries and collective bargaining, regional market comparisons, and coordination of pay policies between executive agencies.

Other topics on the agenda will include:

- a pension model update;
- an update on state information technology projects;
- a progress update on the statewide accounting system upgrade, known as IBARS; and
- information on local government infrastructure funding.

Next Meeting

The committee meets next at 8:30 a.m. on March 13 in Room 172 of the Capitol. The meeting will continue at 8 a.m. on March 14. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Legislative Fiscal Analyst Amy Carlson.

Committee Website: www.leg.mt.gov/lfc
Committee Staff: acarlson@mt.gov or 406-444-2986

RTIC Concentrates on Centrally Assessed Property Tax Appeals, Oversize Loads

The Revenue and Transportation Interim Committee met Feb. 18-19 in Helena to continue work on its two assigned studies, hear agency reports, and receive a general fund update.

Oversize Loads

The committee continued the Senate Joint Resolution 26 study of oversize loads with a panel discussion on the role of local governments in the movement of oversize loads. Don Verrue from the City of Missoula discussed the city's oversize permit. The committee subsequently asked its staff attorney, Jaret Coles, for a legal opinion on whether the city can require an oversize permit for a move on a state highway.

Staff also presented additional information on Alberta's High Load Corridor, including how the corridor is funded and the history of sections of the corridor developed by private industry. Duane Williams, administrator of the Department of Transportation's Motor Carrier Services Division, provided a comparison of Montana oversize and overweight permit fees with neighboring states. In addition, committee staff and MDT Director Mike Tooley discussed a federal study related to truck size and weight limits. The study is focused on considering increasing legal limits and does not address the large oversize loads that are the subject of the SJR 26 study.

Taxpayer Appeal Process

The committee also heard a panel discussion on centrally assessed property tax appeals, as part of its SJR 23 study of the taxpayer appeal process. Panelists included two attorneys who work with centrally assessed clients, the Department of Revenue's deputy chief legal counsel, and the chair of the State Tax Appeal Board.

Attorney Tom Ebzery provided three different detailed "recommendation packages" for modifying the tax appeal process. One recommendation is to change State Tax Appeal Board member qualifications and the appointment process and to have the appeal board's decisions appealed directly to the Montana Supreme Court, rather than to a district court. A second option is to establish a tax court with one judge to hear centrally assessed and large industrial property appeals. The third recommendation is to create a three-person tax court or tax tribunal.

The second panelist, Murry Warhank, provided written testimony from his colleague Terry Cosgrove and discussed the ideas of moving towards a tax court, allowing taxpayers with valuations of greater than \$1 million to appeal directly to a district court, and considering changes to the discovery process.

Dan Whyte, deputy chief legal counsel for the Department of Revenue, made four suggestions: providing additional education for county tax appeal board members; allowing industrial properties to appeal directly to the State Tax Appeal Board; allowing de novo hearings, in which a case is heard as if for the first time, for annually assessed taxpayers who appeal to both the county and state tax appeal boards;

and clarifying two state laws -- 15-2-301 and 15-2-302, MCA -- related to the discovery process.

State Tax Appeal Board Chair Karen Powell discussed the types of training that members receive, suggested that centrally assessed property valuation appeals will be long and complex no matter who hears these cases, and reminded the committee that the State Tax Appeal Board focuses only on tax cases while district court judges hear cases on a variety of civil and criminal matters.

Another agenda item for the SJR 23 study focused on property tax documents and protested taxes. The Department of Revenue discussed assessment notices for different property types, and Ronda Wiggers of the Montana County Treasurers Association provided sample tax bills from several counties. Lewis and Clark County Treasurer Paulette DeHart also discussed the challenges counties face related to protested taxes.

Other SJR 23 agenda items included presentation by committee staff and the Department of Revenue of data related to tax appeals and an overview of the Council on State Taxation Scorecard on Tax Appeals and Procedural Requirements. A scheduled overview of the Workers' Compensation Court was canceled by the presenter and may be rescheduled for a future meeting.

During its work session, the committee asked staff to draft a bill to allow industrial property taxpayers to appeal directly to the State Tax Appeal Board. The committee also requested additional information on the workload and history of the Workers' Compensation Court and Water Court.

Administrative Rule Review

As part of his overview of adopted and proposed administrative rules, staff attorney Jaret Coles raised a comment on a provision of MAR 42-2-906 that DOR will not certify the base taxable value of a targeted economic development district or urban renewal district that crosses a school district boundary. DOR agreed to delay adoption of the rule and will provide additional information at the next committee meeting.

Agency Updates

MDT Director Tooley offered comments on a recently released Advocates for Highway and Auto Safety report. The report ranked states on the adoption of certain highway safety laws for which the group advocates. Tooley said the three biggest factors for automobile accidents in Montana are speed, alcohol, and seat belt use. He said Montana could improve in these areas by enacting a primary enforcement seat belt law, raising the fines for speeding tickets, and continuing programs aimed at preventing impaired driving.

The DOR agency update included a report on the Office of Taxpayer Assistance and an update on income tax fraud. The committee learned about how DOR and the Department of Fish, Wildlife and Parks share income tax filing residential status and hunting and fishing license information to prevent fraud in both agencies. DOR Director Mike Kadas also informed the committee that DOR is re-establishing the Local Government Advisory Committee.

Other Activities

Also during its two-day meeting, the committee toured the Department of Revenue's income tax processing center. The tour included an overview of how DOR processes paper and electronic tax returns and the activities of the collections and citizens services divisions.

Legislative Fiscal Division staff provided two reports to the committee. Revenue Analyst Stephanie Morrison updated the individual income tax credit analysis provided to the committee last interim. The LFD revenue staff also provided a general fund revenue update.

The committee began a required review of advisory councils of assigned agencies. The committee requested a bill draft to make appointment of the advisory council for the Multi-state Tax Compact optional rather than required because the advisory council has never been appointed. The committee also requested additional information on why the Transportation Commission has appointed only three members to the Scenic-Historic Byways Advisory Council when the law allows for 11 members. The committee did not request any changes to the Agricultural Advisory Committee or the Forest Lands Taxation Advisory Committee.

The committee chose to reschedule an expected overview of local government reimbursements and financing because of time constraints.

Next Meeting

The committee meets next on May 6 at the Capitol in Helena. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Megan Moore, committee staff.

Committee Website: www.leg.mt.gov/rtic

Committee Staff: memooore@mt.gov or 406-444-4496

Examination of Political Practices Office Heats Up

Political Practices Commissioner Jonathan Motl was on the hot seat Feb. 6 as the State Administration and Veterans' Affairs Interim Committee continued its examination under

House Joint Resolution 1 of the powers and duties of his office.

Motl responded to several sets of questions posed in the wake of a panel discussion in December about whether state law gives the Office of Commissioner of Political Practices (COPP) too much or not enough power and funding. Questions ranged from how many hours are spent auditing and seeking correction of technical errors in campaign finance reports to budget and expenditures and how investigations are conducted.

Recent headlines also have drawn attention to Motl's office. The COPP has issued 42 non-binding determinations since Motl was appointed by Gov. Steve Bullock in May 2013. The previous commissioner, Jim Murry, served 14 months and issued 22 decisions. Many of Motl's determinations involved allegations against legislative candidates for illegally accepting or failing to disclose so-called "dark money" spent by Western Tradition Partnership and its affiliates during their campaigns. Dark money is the term used for money spent by political groups that do not report their donors or spending. Controversy also arose when Motl re-opened previously dismissed complaints and, after finding sufficient evidence to support a complaint against Republican Rep. Mike Miller of Helmsville, filed an action in Helena District Court seeking administrative fines and Miller's removal from office. On the other hand, the commissioner also has dismissed complaints after finding insufficient evidence to support the complaint's allegations.

The committee also has been examining practices in other states and the pros and cons of restructuring what is now an informal process into a more formal contested case process. Members also have looked at how the commissioner is appointed and the role of legislative confirmation of the commissioner.

The committee has not yet made any decisions concerning the direction of the HJR 1 study, but the agenda for the April 9 meeting will include a discussion about whether the committee should hold a public hearing on Motl's interim appointment. His appointment is subject to Senate confirmation during the 2015 legislative session. Although the committee has no statutory role in the confirmation process, it could make a recommendation to the Senate. Also slated for the April 9 meeting is a discussion about the preliminary bill draft recommendations the committee may be interested in sponsoring as a result of the HJR 1 study.

Election Law Study

In other activity, the committee's Subcommittee on Election Laws under Senate Joint Resolution 14 has been working on statutory revisions to clarify definitions and eliminate con-

flicts in state laws involving various administrative dates and deadlines.

A working group of stakeholders will meet March 7 to continue discussion of school election laws, while the subcommittee itself will meet by conference call sometime after that to finalize its recommendations to the full committee. The recommendations will be presented to the full committee at its next meeting.

Next Meeting

The committee meets next on April 9 in Room 172 of the Capitol in Helena. For more information about the committee's activities and upcoming meetings, visit the committee's website or contact Sheri Scurr, committee staff.

Committee Website: www.leg.mt.gov/sava

Committee Staff: sscurr@mt.gov or 444-3596

Water Policy Committee to Examine CSKT Water Compact Details

The Water Policy Interim Committee will discuss how fish, farmers, and others might fare under part of a proposed water rights compact with the Confederated Salish and Kootenai Tribes when the committee meets March 18 in Helena.

An agreement between the tribes and the Flathead Joint Board of Control spells out specific amounts of water to be allocated to irrigators, streams, storage reservoirs, and other uses under the proposed compact. The agreement – known as the Water Use Agreement – also lists various improvements to the Flathead Indian Irrigation Project to improve system efficiency. However, because the Flathead Joint Board of Control has dissolved since the proposed agreement was reached, the status of the Water Use Agreement is unclear. Legal and technical experts with the Reserved Water Rights Compact Commission will discuss this uncertainty, as well as explain important components of the Water Use Agreement and the data modeling used to create it.

The committee also will hear from a Colorado attorney as part of the House Joint Resolution 26 interim study of irrigation ditch easements. Water rights attorney Scott Miller of Aspen, Colo., will discuss how the Colorado courts resolve intractable ditch disputes between landowners and ditch owners. Montana law prohibits encroachment or impairment of a ditch easement without consent from the ditch owner.

Also at the meeting, the committee will hear about:

- proposed administrative rules for base numeric nutrient standards; and
- stream depletion zones. State Geologist John Metesh will discuss the science behind Senate Bill 346, which created

the zones. A stream depletion zone is a way of modeling the influence of potential groundwater wells on existing water rights.

Next Meeting

The committee meets next at 8 a.m. on March 18 in Room 172 of the Capitol. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Jason Mohr, committee staff.

Committee website: www.leg.mt.gov/water

Committee staff: jasonmohr@mt.gov or 406-444-1640

The Back Page

This Land Is Your Land, This Land Is...

Public Land Management Tensions Have Long History

by Joe Kolman

Legislative Environmental Analyst

Montana's history with the management of federal land within its borders runs wide and long. From the establishment of the first national park to the south, to some of the nation's first forests in the west and north, to the first grazing district in the east, Montanans are familiar with the laws and judicial interpretations about the public domain.

With more than one-third of Montana's acreage in public ownership -- most which is held by the federal government -- the 2013 Legislature noted that federal land management has a significant and direct bearing on the state's environment, education funding, economy, culture, wildlife, and the health, safety, and welfare of its citizens.¹

The Legislature approved Senate Joint Resolution 15, for a study of federal land management in Montana. As part of that study, the Environmental Quality Council is reviewing the complex web of laws, court decisions, and financial realities that govern the management of public lands.

But for many Montanans, the management of public land amounts to something more tangible than dictates from a bureaucratic office, a legislative chamber, or a judicial bench. Montanans explore public lands on foot and bicycle, in boats and trucks, or astride horses or off-road vehicles. We cut the trees and mine the rock. We hunt the animals and drink the water. For many Montanans, public lands are our backyards. So it stands to reason that when there are conflicts between the uses on public lands, they hit close to home.

That is as true today as it was more than a century ago. Back in the days of the open range, a Montana cattleman realized up close what it meant to have a local interest in a piece of the earth that he neither owned nor managed.

As told to Joseph Kinsey Howard in the book, "Montana: High, Wide, and Handsome," that cowboy was riding the range when he came upon a sheepherder camped with his flock. He told the herder to leave. The next day, the sheepherder was still there. Again, the cattlemen told the lamb licker to leave the range.

"The herder looked up calmly at the mounted stockman. 'You own it, pardner?' he asked. The cattleman admitted that he didn't. 'But it's my range,' he retorted, 'and I want you off!'"

"The herder got up slowly, drawing a Winchester rifle from the ground as he did so. 'Listen, friend,' he said quietly. 'I just got out of prison after shooting one sonofabitch like you and I'd just as soon go back for shooting another.'"

Relating the story to Howard for the book, the cattleman said, "Looking into the barrel of that gun, you know, I realized for the first time that I didn't own that range ... and by God, I didn't even have a gun on me!"

Unarmed yet passionate debate over the use and management of federal lands continues today.

As the EQC continues its study of federal land management, Utah and Nevada are calling on the federal government to extinguish title to public lands in their states. Idaho's Legislature created an interim committee to identify options for the state to acquire title control of public lands. Lawmakers in Wyoming directed the attorney general to present legal options for the transfer of public lands and created a committee to study related issues.

At the federal level, several hundred proposals dealing with public land and natural resources are before Congress. The state and local communities also are working within the existing management options and as part of collaborative projects.²

Historical Overview

Acquisition of Public Lands

Tension surrounding the management of public lands in what is known as “The West” today can be traced to the origins of the United States when the term “western lands” referred to the acreage between the Appalachian Mountains and the Mississippi River, where foreign ownership started.³

This land was claimed by some of the original states. But as the nation began to take shape, smaller states feared that states with large land holdings would have too much power. The Continental Congress urged those states to cede the land for a number of reasons, including equalizing resources and population for the new nation, providing a means to pay for the Revolutionary War and the running of the new federal government, creating a feeling of solidarity by owning land for the common benefit, and freeing individual states of the burden of competing claims on the land by Indians, foreign governments, land companies, and individuals.⁴

The era of acquiring federal land was a combination of purchase and conquest of land owned by foreign nations and Indian tribes. Present-day Montana was part of the Louisiana Purchase in 1803 and the Oregon Compromise in 1846.

Disposition of Public Lands

From the birth of the nation until 1934, the general policy of the federal government was to sell or give public land to states, veterans, homesteaders, railroads, miners, ranchers, and others. Through 2012, almost 1.3 billion acres of federal land have been disposed of, though most of that took place prior to the 1950s. A little less than half a billion acres went to the states, including almost 143 million acres to Alaska. Homesteaders claimed almost 288 million acres. Railroads, timber companies, and other interests got about 225 million acres.⁵

At the time, what was seen as the best and most productive land for agriculture, mineral development, and town sites was settled first.⁶

While many Americans supported land disposals aimed at raising money to pay debts and encouraging development of the growing nation, the chasm widened between Easterners who tended to view the land as national property and Westerners who desired it for local use and development.⁷

In Montana, homesteaders filed more claims on land than in any other state. Almost 25 million acres of land were homesteaded between 1909 and 1923, a credit to generous land

policies, new farm machines and methods, and optimistic promotions.⁸

But even before the boom started in Montana, rapid development and conflict over the use of public land gave rise to concerns about protecting some of the nation’s most unique and scenic lands and preserving natural resources for future use.

Retention of Public Lands

Yellowstone National Park was established in 1872. The act provided that the designated area “is hereby reserved and withdrawn from settlement, occupancy, or sale under the laws of the United States, and dedicated and set apart as a public park or pleasuring-ground for the benefit and enjoyment of the people”⁹

The power to create forest reserves was granted by Congress to the president in 1891. By 1906, more than 200 million acres had been set aside to eventually be managed by the National Park Service and the U.S. Forest Service. Much of the acreage in what are now Montana’s nine national forests as well as Glacier National Park were reserved during this time.^{10,11}

The purpose of the forest reserves, as Congress stated in 1897, were:

to improve and protect the forest within the reservation, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of the citizens of the United States.

During this period of retention, Congress also saw fit to retain ownership under federal lands of mineral interests, most notably oil and coal.¹³

After the disposition of lands to states and other interests for farming, timber, and mining, as well as the reservation of forested lands and mineral interests, most of the public land remaining was good for little more than grazing. But free forage was attractive to many a rancher and herder.

Predictably, as evidenced by the anecdote in the introduction between the cowboy and the shepherd, the lack of laws governing the open range sparked disputes as millions of acres were overgrazed.¹⁴ While the open range contributed to the economic and political power of the livestock industry, it was also recognized that overgrazing led to widespread erosion, flooding, and changes in vegetation that threatened the stability of ranching.¹⁵

Some thought a Montana experiment might solve the range wars. In fact, it gave rise to the present-day management of the Bureau of Land Management (BLM).

The theory was to lease public lands for grazing, thereby bringing cooperative management to the open range problem. Eastern Montana Congressman Scott Leavitt carried the bill that in 1928 established the Mizpah-Pumpkin Creek Grazing District in Custer County. It included about 108,000 acres of federal, state, Northern Pacific Railway Co., and private lands.¹⁶

However, President Herbert Hoover and others did not want to deal with managing the land. They wanted to turn over the surface rights to the states. A Public Lands Commission studied the idea and endorsed disposing of the land to the states.

Few cheers greeted the disposal legislation. In the East and Midwest, the proposal was seen as another land giveaway. Westerners didn't like it, either, because the minerals and forested lands were left out of the offer. Revenue from timber and minerals was needed to pay for improving and administering the grazing lands, they said.¹⁷

Utah Gov. George Dern told Congress that the Western states wanted all of the federal land within each state -- not just the lands with "everything else taken out that is worth anything at all so that we will have nothing but the skin of a squeezed lemon." He added that if, "we cannot get immediate control and rehabilitation of our public domain, we are against this whole proposition."¹⁸

The failure of the cession proposals again turned attention to grazing districts and the Montana experiment. Managed grazing districts had opposition, however, including Montana Sen. Thomas Walsh, who said it favored only some ranchers. Other opponents railed against any federal management of the open range.¹⁹

The opposition buckled in 1934 in the face of a drought and a threat from the U.S. secretary of the interior to regulate grazing under his own authority. In signing the Taylor Grazing Act, President Franklin D. Roosevelt declared the law "a great forward step in the interests of conservation, which will prove of benefit not only to those engaged in the livestock industry, but also the nation as a whole."²⁰

The Grazing Act effectively marked the end of the disposition era.

Management of Public Lands ²¹

U.S. Forest Service

The original management goals for national forest lands as articulated in the late 1800s -- manage for favorable water flows and a continuous supply of timber -- were expanded in 1960 with the passage of the Multiple-Use Sustained Yield Act, adding recreation, livestock grazing, wildlife and fish habitat, and wilderness as uses of the national forest.²²

As defined in the act, multiple use means:²³

The management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.

The housing boom following World War II and a dwindling supply of privately owned timber were partly behind the movement to produce more timber from public lands. The presence of wilderness advocates also prompted traditional users such as loggers and miners to argue more for their interests.²⁴

Congress defined sustained yield as "the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land."²⁵

The Forest Service manages about 17 million acres in Montana as part of Region One, which includes another 8 million acres in Washington, Idaho, North Dakota, and South Dakota.

Bureau of Land Management

The merger in 1946 of the General Land Office and the U.S. Grazing Service created the BLM. The land office helped convey lands to Western settlers, while the grazing service managed grass.

Nevertheless, Congress continued to wrestle with whether or not to keep public lands or dispose of them. In 1976, Congress passed the Federal Land Policy Management Act, which said public lands should remain in federal ownership unless the disposal is in the national interest. The law also required that the management take into account the nation's need for domestic sources of minerals, food, timber, and fiber.²⁶

In Montana, the BLM manages almost 8 million acres of surface land and 37.8 million acres of subsurface minerals.²⁷

Compensation for Public Lands

Federal lands are not subject to local or state taxes. For more than a century, Congress has been devising ways to com-

pensate state and local governments for tax revenue that the federal land would have generated in taxes.

Revenue sharing is the oldest mechanism. The allocation of the revenue depends on the use that generates the money and the historic purpose of the land. At least in the case of the Forest Service, revenue sharing may be the simplest form of compensation. The agency returns 25 percent of gross revenues -- whether generated from timber sales, grazing fees, or other uses -- to be used for roads and schools within counties that have Forest Service land.²⁸

In the mid-1970s, as the shift from disposal of federal lands to retention of the lands was being articulated in law, a permanent source of funding for lost tax revenue was created. The Payment In Lieu of Taxes program includes a maximum per-acre payment that is reduced by the sum of revenue-sharing payments and subject to a population cap.

Declining timber sales and county payments in the 1990s led to the Secure Rural Schools Act of 2000, which provided counties with payments at the average of the three highest payments from 1986 to 1999. This act expired in 2012 but was renewed in 2013.

Revenue from BLM lands is allocated by individual laws.

Within a grazing district, about half of the grazing revenue benefits counties. Outside a district, the local share is generally 12 percent. About half of mineral royalties are sent to the states of origin. In Montana, 25 percent of the state's share goes to the county of origin.²⁹

In 2012, Montana received \$99.1 million related to activities on federal lands, the largest portion, \$47.2 million, from mineral royalties. Almost half went to the state government, 40 percent to counties, 6 percent to schools, and the rest to resource advisory councils and grazing districts.³⁰

Opposition to Federal Management

The formal end of the land disposal era sparked the movement to turn over federal land that was known as "The Sagebrush Rebellion" or "The Great Terrain Robbery."

Most efforts focused on BLM lands, but national forests also were included. Arizona, Hawaii, Idaho, New Mexico, Nevada, North Dakota, Utah, and Wyoming passed laws asserting state authority over federal land. Nevada's assertion that retaining the lands was unconstitutional was defeated in a court, and none of the state laws were enforced.³¹

In general, the states asserted that federal lands were held in trust pending eventual disposal to the states.³²

Montana legislators in 1981 offered two Sagebrush-related bills.

Senate Bill 123, sponsored by Republican Sen. Mark Etchart of Glasgow, called for the title to federal lands to transfer to the state.

It asserted that:

the attempted imposition upon the State of Montana by the Congress of the United States of a requirement in the Statehood Act that the state of Montana and its people "disclaim all right and title to the unappropriated public lands lying within (its) boundaries", as a condition precedent to acceptance of Montana into the Union, was an act beyond the power of the Congress of the United States and is thus void;

The bill claimed ownership of land, water, and minerals for federal lands outside of national parks, Indian reservations, national monuments, wilderness areas, and wildlife refuges, unless the refuge was larger than 400,000 acres.

Bernard Harkness of Dell, identified as chairman of the Sagebrush Rebellion, testified that "vesting of ownership and management of the public lands in Montana means a rebirth of the prestige and power of State Government and a long overdue withdrawal of the massive dominance and power of the federal bureaucracies in Montana."

Other supporters included the Montana Wood Products Association, Montana Wool Growers, Montana Cowbells, Montana Cattlemen's Association, and the Joint Council of Teamsters.

Opponents included the Audubon Society, a former forester for the Forest Service Northern Region, and the Montana Environmental Information Center.

Fred Burnell of Stevensville noted that federal lands in western Montana are the source of much water.

"To break these lands by state boundaries and/or manage them through practices dictated by local rather than national needs would result in conditions critical and adverse to our national well being," said Burnell, representing the Montana Forestry School Alumni Executive Association.

Both opponents and supporters cited management of the Charles M. Russell National Wildlife Refuge as one factor among several for the legislation. In 1976, management responsibilities for the area were taken away from the BLM and given solely to the U.S. Fish and Wildlife Service.³³

The bill passed the Senate, but died in the House. The other measure, House Joint Resolution 13, also died. It would have voiced legislative support for actions by Western states to gain control of certain public lands within their boundaries.

At the national level, President Ronald Reagan established the Property Review Board to review federal land for disposal.³⁴

Although the president's action was seen as a nod to the sentiments of the Sagebrush Rebellion, the 1983 Montana Legislature reacted by passing a bill requiring the director of the Montana Department of Natural Resources and Conservation to evaluate the sale or transfer of federal land within the state to determine:

whether there would be any impact on the management of state lands, on agricultural, wildlife, or recreational resources of the state, or on the cost of government services provided by the state, by any school district, or by any county, city, or other local government unit because of the sale or transfer.³⁵

Concerns of Westerners about federal land ownership and management continue to persist at the local, state, and national level.

In recent Montana legislative sessions, failed legislation attempted to wrest control of federal land by alleging violations of the U.S. Constitution, by exercising eminent domain, or by alleging that the land condition constituted community decay.³⁶

As the EQC continues its SJR 15 study, other states are debating federal land management, too.

In 2012, Utah passed legislation requiring the United States to extinguish title to public lands and transfer title to the state before 2015.³⁷ The 2013 Legislature directed the Public Lands Policy Coordinating Office to conduct a study and economic

analysis of the transfer of certain federal lands to state ownership.³⁸

The 2013 Nevada Legislature created the Nevada Land Management Task Force to conduct a study addressing the transfer of public lands. Each of 17 counties has one representative on the task force, which is conducting the study in contemplation of Congress turning over federal land to the state by June 30, 2015.³⁹

Wyoming in 2013 created a task force to study the transfer of public lands. The bill also requires the attorney general to report on possible legal options available to compel the federal government to relinquish ownership and management of specified federal lands in Wyoming.⁴⁰

Idaho also created a committee to study the process for the state to acquire title to and control of public lands controlled by the federal government.⁴¹

The Arizona Legislature in 2012 passed a law similar to Utah's. However, it was vetoed by Gov. Jan Brewer. The veto message said the measure violated the state's Enabling Act as well as the Property Clause of the U.S. Constitution. That clause gives Congress the power to dispose of and set rules for federal property.⁴²



¹ Senate Joint Resolution 15. <http://leg.mt.gov/bills/2013/billpdf/SJ0015.pdf>

² This article is condensed from a paper provided to the EQC. More information about federal land management and funding as well as state and local interaction is available here: <http://leg.mt.gov/content/Committees/Interim/2013-2014/EQC/Committee-Topics/sj-15/SJ15-primer.pdf>

³ Historical reflections on public land law are consistent in a variety of publications. Three sources used here are *Federal Public Land and Resources Law*, 2nd Edition, George Cameron Coggins and Charles F. Wilkinson; *Modern Public Land Law in a Nutshell*, 4th edition, Robert Glicksman and George C. Coggins; and *Federal Land Management Agencies: Background on Land and Resource Management*, Congressional Research Service, Feb. 27, 2001.

⁴ *Foundations of Public Domain Management*, A collaborative effort between the USDA Forest Service and George Mason University, 1996. <http://class-web.gmu.edu/erodger1/prls542/prls542.htm>

⁵ 2012 Public Land Statistics, BLM. Table 1-2. http://www.blm.gov/public_land_statistics/index.htm

⁶ *One Third of the Nation's Land: A Report to the President and to the Congress by the Public Land Law Review Commission*, June 1970. Gene Etchart, a Glasgow rancher and legislator, was a member of the advisory council to the commission.

⁷ *Modern Public Land Law in a Nutshell*, 4th edition, Robert Glicksman and George C. Coggins.

⁸ *Montana: A History of Two Centuries*, Revised Edition, Malone, Roeder, Lang.

⁹ *An Act to Set Apart a Certain Tract of Land Lying near the Headwaters of the Yellowstone River as a Public Park*, Approved March 1, 1872 (17 Stat. 32). http://www.cr.nps.gov/history/online_books/anps/anps_1c.htm

¹⁰ *Encyclopedia of American Forest and Conservation History*, Davis, Richard C., ed., New York: Macmillan Publishing Company for the Forest History Society, 1983. Vol. II, pp. 743-788. <http://www.foresthistory.org/ASPNET/Places/National%20Forests%20of%20the%20U.S.pdf>

¹¹ *The National Forests of the Northern Region, Living Legacy*, Baker, Robert D., et al. 1993. <http://www.foresthistory.org/ASPNET/Publications/region/1/history/chap3.htm>

¹² Federal Land Management Agencies: Background on Land and Resource Management, Congressional Research Service, Feb. 27, 2001. <http://www.nplnews.com/toolbox/fedreports/crs-fedlands.pdf>

¹³ Modern Public Land Law in a Nutshell, 4th edition, Robert Glicksman and George C. Coggins.

¹⁴ Federal Public Land and Resources Law, 2nd Edition, George Cameron Coggins and Charles F. Wilkinson.

¹⁵ The Mizpah-Pumpkin Creek Grazing District: Its History and Influence on the Enactment of a Public Lands Grazing Policy, 1926-1934, James Allan Muhn, 1987.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Report on Utah's Transfer of Public Lands Act | H.B.148, November 2012. <http://utah.gov/ltgovernor/docs/CDC-AGLandsTransferHB148.pdf>

¹⁹ The Mizpah-Pumpkin Creek Grazing District: Its History and Influence on the Enactment of a Public Lands Grazing Policy, 1926-1934, James Allan Muhn, 1987.

²⁰ Opportunity and Challenge: The Story of BLM. http://www.nps.gov/history/history/online_books/blm/history/chap1.htm

²¹ Four federal agencies manage federal lands. The U.S. Forest Service and the Bureau of Land Management are responsible for most of the public land in Montana and are the focus of this background information. The other agencies are the National Park Service and the U.S. Fish and Wildlife Service.

²² Federal Land Management Agencies: Background on Land and Resource Management, Congressional Research Service, Feb. 27, 2001. <http://www.nplnews.com/toolbox/fedreports/crs-fedlands.pdf>

Wilderness was statutorily defined as an area “untrammelled by man” as part of the Wilderness Act of 1964.

²³ 16 U.S.C Sec. 531.

²⁴ Federal Public Land and Resources Law, 2nd Edition, George Cameron Coggins and Charles F. Wilkinson.

²⁵ 16 U.S.C Sec. 531.

²⁶ 43 U.S.C. 170.

²⁷ See Appendix C, SJ15 Public Land Management Study: History and Issues, Joe Kolman, September 2012. <http://leg.mt.gov/content/Committees/Interim/2013-2014/EQC/Committee-Topics/sj-15/SJ15-primer.pdf>

²⁸ Federal Land Management Agencies: Background on Land and Resource Management, Congressional Research Service, Feb. 27, 2001. <http://www.nplnews.com/toolbox/fedreports/crs-fedlands.pdf>

²⁹ 17-3-240, MCA.

³⁰ For information on state and local payments, see Appendix F, SJ15 Public Land Management Study: History and Issues, Joe Kolman, September 2012. Mineral royalty payments to counties are included in Appendix G of that report. <http://leg.mt.gov/content/Committees/Interim/2013-2014/EQC/Committee-Topics/sj-15/SJ15-primer.pdf>

³¹ Federal Land Ownership: Constitutional Authority and the History of Acquisition, Disposal, and Retention, Congressional Research Service, 2007.

³² Ibid.

³³ History of the Refuge. http://www.fws.gov/refuge/Charles_M_Russell/about/history.html

³⁴ The program stalled. The administration would not identify lands until Congress gave disposal authority, and Congress would not approve the authority until lands were identified. Federal Land Ownership: Constitutional Authority and the History of Acquisition, Disposal, and Retention, Congressional Research Service, 2007.

³⁵ 77-2-401, MCA.

³⁶ Senate Bill 34, 2009; House Bill 506 and Senate Bill 254, 2011.

³⁷ <http://le.utah.gov/~2012/bills/hbillenr/HB0148.pdf>

³⁸ <http://le.utah.gov/~2013/bills/hbillenr/HB0142.pdf>

³⁹ http://www.leg.state.nv.us/Session/77th2013/Bills/AB/AB227_R1.pdf

⁴⁰ <http://legisweb.state.wy.us/2013/Enroll/HB0228V2.pdf>

⁴¹ <http://legislature.idaho.gov/legislation/2013/HCR021.pdf>

⁴² http://www.azleg.gov/legtext/50leg/2r/summary/s.1332bsfss_asvetoed.pdf